

## **RESOLUTION CONCERNING RECOVERY PROGRAM POLICY**

**Adopted October 21, 1997**

**Revised and Re-Adopted January 20, 1999**

**Whereas**, the Colorado River Water Conservation River District (River District) was created and formed pursuant to C.R.S. §§ 37-46-101 through 151 to:

"secure and ensure an adequate supply of water, present and future, for irrigation, mining, manufacturing and domestic purposes" within the River District's service area;

promote the "growth and development of the entire district and the welfare of all its inhabitants"; and

"safeguard for Colorado, all waters to which the state of Colorado is equitably entitled under the Colorado river compact."

*Id.* at -101 and 107.

**Whereas**, the River District is comprised of the following 15 Western Slope counties: Grand County, Routt County, Moffat County, Rio Blanco County, Ouray County, Mesa County, Garfield County, Pitkin County, Eagle County, Delta County, Gunnison County, Summit County, those parts of Hinsdale and Saguache Counties lying west and north of the continental divide and within the drainage basin of the Gunnison River, and that part of Montrose County not included in the Southwestern Colorado River Water Conservation District. *Id.* at -103.

**Whereas**, the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program) was created to "...provide for recovery of the endangered fish species, consistent with federal law and all applicable state laws and systems for water resource development and use."

**Whereas**, the Recovery Program materially affects and may provide benefits to the River District and its constituencies.

**Whereas**, the River District has supported the Recovery program in the past with the intention of protecting the interests of present and future Western Slope water users and the right of water users within the State to fully utilize Colorado's entitlement under the Colorado River Compact and the Upper Colorado River Basin Compact.

***Whereas***, the River District recognizes that protection of instream flows for the benefit of the fishes listed as endangered will be necessary to meet the delisting criteria for the fishes under the Endangered Species Act and that said instream flow protection will be accomplished under state law.

***Whereas***, the River District recognizes that the fish protection and recovery flows on any stream reach must be measured by definable needs and objective recovery criteria for that reach.

***Whereas***, the Recovery Program has adopted Interim Management Objectives (IMO's) including the target numbers for individual populations of the listed fishes to achieve recovery as defined in the individual species recovery plans. The IMOs require scientific verification of many parameters which significantly affect said targets, such as ratio of male to female spawning fish, year to year survival, age of sexual maturity.

***Whereas***, the River District is concerned that the Recovery Program not be implemented in a manner that may provide substantial benefits to the Eastern Slope water users and water users downstream from the River District's boundaries at the expense of Western Slope water users. Among the River District's concerns are the following:

- a. The Recovery Program has the potential to favor large transmountain diversion projects, the facilities for which are already in place;
- b. The Eastern Slope water users must bear an equitable share of the burden of the Recovery Program; and
- c. The parties downstream from the River District's boundaries whose activities have endangered the fish should bear the financial burden for their recovery.

***Whereas***, Western Slope water users must be entitled to rely upon storage in Green Mountain Reservoir and Ruedi Reservoir to compensate them for transmountain diversions in the headwaters of the Colorado River and Fryingpan River to the Eastern Slope. Such compensatory storage is exclusively for the present and future benefit of the Western Slope.

***Whereas***, the Recovery Program currently relies upon releases from compensatory storage projects

to achieve federally recommended flows (i.e., releases from Green Mountain Reservoir and Ruedi Reservoir). As such, the Recovery Program threatens the historic bargains which the River District and other Western Slope water users made with transmountain diverters when they consented to the development of transmountain diversion projects in exchange for storage of water for future consumptive use on the Western Slope. The River District fears that the Recovery Program will result in operations that will reallocate these Western Slope waters, in part to protect transmountain diversions from regulatory actions with respect to the endangered fish, thereby depriving the River District's constituents of their historical and anticipated water entitlements.

*Whereas*, the River District expects the implementation of the Recovery Program to function as the reasonable and prudent alternative to any finding of jeopardy to the continued existence of the endangered species and adverse modification of the species' critical habitat with respect to all federal actions related to water depletion effects on the listed fishes and, therefore, that the Recovery Program will accommodate full compact development.

*Now therefore be it resolved* that the River District supports the Recovery Program and its purpose of recovering the endangered fish species. In order to insure that the implementation of the Recovery Program is consistent with State law and Colorado's entitlement under the Colorado River Compact and Upper Colorado River Basin Compact, and for the River District to continue its support for the Recovery Program, the following actions must be accomplished:

- a. The Recovery Program must prioritize its resources and efforts to accomplish basin-wide recovery with less than existing flow in the Colorado River and its tributaries. Additional recovery efforts must include nonnative elimination and control, habitat modification and restoration, and additional stocking of endangered fishes. The effectiveness of those efforts must be factored into any decisions concerning the amount of depletions allowed under Section 7 Endangered Species Act consultation and the amount, if any, of instream flow protection needed for species' delisting.

- b.** The Recovery Program must ensure that the burden of implementation, operation, and compliance will be equitably distributed upon all water users, including transmountain diverters, without regard to the geographic locations of the legal beneficial uses of the diverted water, within the State. The components of this equitable distribution must include:

  - (i)** The level of regulatory certainty provided by the Recovery Program to the beneficiaries of Western Slope compensatory storage components of transmountain diversion projects must be equivalent to the regulatory certainty provided to the transmountain diversions from the Colorado River Basin; and
  - (ii)** Any Federal or State commitment of West Slope water resources (eg. Ruedi Reservoir water delivery to the 15-Mile Reach) must require that compensation or substitute water for the benefit of Western slope users be provided by all East Slope parties benefitting from the Recovery Program.
- c.** The U.S. Bureau of Reclamation (Reclamation) must promptly issue Round II contracts for all applicants currently requesting Ruedi Reservoir water. The River District's Board is committed to working with Reclamation, the U.S. Fish and Wildlife Service (Service) and the Ruedi Water & Power Authority to address the Western Slope obligations for the repayment of the Western Slope's portion of Ruedi Reservoir. However, the Ruedi contractors must not bear a greater regulatory risk than other Recovery Program beneficiaries.
- d.** The Service must use the Recovery Program as the reasonable and prudent alternative to offset jeopardy to the endangered species and adverse modification to critical habitat for existing and future depletions. Measures taken to accomplish recovery of the fish are the responsibility of the Recovery Program and its participants, not individual water users seeking Section 7 consultations under the Endangered Species Act.

- e. A successful Recovery Program strategy will require a significant investment in capital projects such as fish passage structures, native fish propagation facilities, fish screens, and habitat improvement and modifications. If an adequate funding program is not secured, failure to construct those facilities may result in the future re-opening of Section 7 consultations. The recovery of the fish is a national policy directed by federal law and therefore should be funded at the federal level and by those water users downstream from the River District's boundaries who have caused the fish to be endangered. Subject to the provisions of this policy, the River District supports the Recovery Program's and the State of Colorado's efforts to obtain funding through Congressional appropriations, CRSP power revenues and State contributions to the Program.
- f. The Recovery Program must serve to recover the listed fishes and maintain water development opportunities in all basins of the River District.
- g. The Service must move promptly toward establishing and validating a reasonable and attainable reach-specific definition of recovery for endangered fish species in the Colorado River system above Lake Powell.
- h. The Recovery Program, including existing and future depletions and recovery actions considered in aggregate, must remove the potential for adverse incidental take of the species or adverse modifications of their habitat. The Recovery Program cannot cause jeopardy to or take of the listed species, as follows:
  - i. Recovery Program actions must be fashioned in a manner that will not express or imply that a depletion is a take of species or harm of their habitat, and will protect against allegations that the impacts from depletions endanger, threaten or take the fish or harm their habitat;

- ii. The Recovery Program must have the full responsibility for the successful completion of recovery measures, such as screening of diversions, to avoid the take of listed species through kill, harassment or harm; and
- iii. Any measures implemented to avoid take within occupied habitat must be implemented without materially increasing the operating costs or reducing the water available and necessary for the beneficial uses provided by facilities that divert or store water within such occupied habitat.

DATED this 20<sup>th</sup> day of January 1999.

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Paul Ohri, President

Attest:

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R. Eric Kuhn, Secretary/General Manager